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1 **295.58 Mining; department grant or denial of permit. (1) CRITERIA FOR**
2 **APPROVAL.** (a) Except as provided in sub. (2) and except with respect to property
3 specified in s. 41.41 (11), the department shall issue a mining permit if it finds all of
4 the following:

5 1. That the mining plan and reclamation plan are reasonably certain to result
6 in reclamation of the mining site consistent with this subchapter.

7 2. That the waste site feasibility study and plan of operation complies with s.
8 295.51.

9 3. That the applicant has committed to conducting the proposed mining in
10 compliance with the mining permit and any other approvals issued for the mining.

11 4. That the proposed mining is not likely to result in substantial adverse
12 impacts to public health, safety, or welfare.

13 5. That the proposed mining will result in a net positive economic impact in the
14 area reasonably expected to be most impacted by the mining.

15 6. That the applicant has applied for all necessary zoning approvals applicable
16 to the proposed mining.

17 (b) The department shall approve or deny an application for a mining permit
18 in writing and shall include the reasons for its decision with clarity and in detail.
19 The department may modify the applicant's proposed mining plan, reclamation plan,
20 or mining waste site feasibility study and plan of operation in order to meet the
21 requirements of this subchapter, and, as modified, approve the application. The
22 approval of the application for a mining permit constitutes the approval of the
23 mining plan, reclamation plan, and waste site feasibility study and plan of operation.
24 In its decision on the application for a mining permit, the department shall include

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1 a final decision on compliance with s. 1.11 and the requirements of s. 295.53,
2 discussing all of the following:

3 1. Whether the department has considered the environmental impact
4 statement and comments received on it.

5 2. Whether the department has complied with ss. 1.11 and 295.53.

6 3. Whether, consistent with social, economic, and other essential
7 considerations, the department has adopted all practicable means within its
8 authority to avoid or minimize any harm to the environment and, if not, why not.

9 (2) CRITERIA FOR DENIAL. The department shall deny the mining permit if it
10 finds any of the following:

11 (a) That the site is unsuitable for mining.

12 (b) That the proposed mining may reasonably be expected to create any of the
13 following situations:

14 1. Hazards resulting in irreparable, substantial physical damage to any of the
15 following that cannot be prevented under the requirements of this subchapter,
16 avoided to the extent practicable by removal from the area of hazard, or mitigated
17 by purchase or by obtaining the consent of the owner:

18 a. A dwelling house.

19 b. A public building.

20 c. A school.

21 d. A church.

22 e. A cemetery.

23 f. A commercial or institutional building.

24 g. A public road.

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1 2. Irreparable substantial environmental damage to lake or stream bodies
2 despite adherence to the requirements of this subchapter. This subdivision does not
3 apply to an activity that the department has authorized under statute, except that
4 the destruction or filling in of a lake bed may not be authorized unless it is authorized
5 under s. 295.60, 295.605, or 295.61.

6 3. Landslides or substantial deposition from the proposed mining operation in
7 stream or lake beds which cannot feasibly be prevented and which have not been
8 authorized under s. 295.60 or 295.605.

9 (c) That the applicant has violated, and continues to fail to comply with, this
10 subchapter.

11 (d) Subject to sub. (3), that the applicant, principal shareholder of the
12 applicant, or a related person has within 10 years before the application is submitted
13 forfeited a mining reclamation bond that was posted in accordance with a permit or
14 other authorization for a mining operation in the United States, unless the forfeiture
15 was by agreement with the entity for whose benefit the bond was posted and the
16 amount of the bond was sufficient to cover all costs of reclamation.

17 (e) Subject to sub. (3), that the applicant, a related person, or an officer or
18 director of the applicant has, within 10 years before the application is submitted,
19 been convicted of more than one felony for violations of laws for the protection of the
20 natural environment arising out of the operation of a mining site in the United
21 States, unless one of the following applies:

- 22 1. The person convicted has been pardoned for all of the felonies.
- 23 2. The person convicted is a related person or an officer or director of the
24 applicant with whom the applicant terminates its relationship.

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1 3. The applicant included in its permit application under s. 295.47 a plan to
2 prevent the occurrence in this state of events similar to the events that directly
3 resulted in the convictions.

4 (f) Subject to sub. (3), that the applicant or a related person has, within 10 years
5 before the application is submitted, declared bankruptcy or undergone dissolution
6 that resulted in the failure to reclaim a mining site in the United States in violation
7 of a state or federal law and that failure has not been remedied and is not being
8 remedied.

9 (g) Subject to sub. (3), that, within 10 years before the application is submitted,
10 a mining permit or other authorization for mining issued to the applicant or a related
11 person was permanently revoked because of a failure to reclaim a mining site in the
12 United States in violation of state or federal law and that failure has not been and
13 is not being remedied.

14 **(3) EXCEPTION FROM DENIAL CRITERIA.** The department may not deny a mining
15 permit under sub. (2) (d) to (g) if the person subject to the convictions, forfeiture,
16 permanent revocation, bankruptcy, or dissolution is a related person but the
17 applicant shows that the person was not the parent corporation of the applicant, a
18 person that holds more than a 30 percent ownership in the applicant, or a subsidiary
19 or affiliate of the applicant in which the applicant holds more than a 30 percent
20 interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy,
21 or dissolution.

22 **(4) STATEMENT.** The department shall send a statement as to whether the
23 applicant has satisfied the requirements of this subchapter to the applicant and to
24 the other persons specified in s. 295.57 (4) (b) 1. to 9.

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1 (5) DURATION OF APPROVALS. (a) A mining permit is valid for the life of the
2 mining project, subject to the enforcement provisions under s. 295.79.

3 (b) An approval under s. 295.60 or 295.61 remains valid for the life of the
4 mining, subject to the enforcement provisions under s. 295.79.

5 (c) An approval issued for a mining project under ch. 23, 29, 30, 169, 281, 283,
6 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a federal
7 requirement limiting its duration, remains valid for the life of the mining project,
8 subject to the enforcement provisions applicable to the approval.

9 (6) EFFECTIVE DATE OF APPROVALS. A mining permit and any other approval is
10 issued upon mailing and is final and effective upon issuance.

11 (7) MERCHANTABLE BY-PRODUCTS. In a mining permit, the department shall
12 require the operator to treat merchantable by-products as refuse if after 3 years from
13 the time the merchantable by-products result from or are displaced by mining the
14 material has not been transported off the mining site, unless removal is continuing
15 at a rate of more than 12,000 cubic yards per year.

16 (8) GENERAL CONTRACTOR OR AFFILIATE. No operator may engage a general
17 contractor or affiliate to operate a mining site if the general contractor or affiliate has
18 been convicted of more than one felony for violation of a law for the protection of the
19 natural environment arising out of the operation of a mining site in the United States
20 within 10 years before the issuance of the operator's mining permit, unless the
21 general contractor or affiliate receives the department's approval of a plan to prevent
22 the occurrence in this state of events similar to the events that directly resulted in
23 the convictions.

24 **295.59 Bonds and other security.** (1) SECURITY FOR RECLAMATION. (a) Upon
25 notification that an application for a mining permit has been approved by the

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1 department but before beginning mining, the operator shall furnish one of the
2 following to the department:

3 1. A bond, furnished by a surety company licensed to do business in this state,
4 conditioned on faithful performance of all of the requirements of this subchapter and
5 all rules adopted by the department under this subchapter.

6 2. Cash.

7 3. Certificates of deposit.

8 4. Government securities.

9 (b) The department shall pay to the operator interest received on certificates
10 of deposit or government securities furnished under par. (a).

11 (c) The operator shall furnish the security required under par. (a) in the amount
12 equal to the estimated cost to the state of fulfilling the reclamation plan, other than
13 the cost of long-term care of the mining waste site, in relation to the portion of the
14 mining site that will be disturbed by the end of the following year. The department
15 shall determine the estimated cost of reclamation of each mining site on the basis of
16 relevant factors, including the character and nature of the lands to be reclaimed, the
17 future suitable use of the land involved, the topography of the mining site, the
18 methods of reclamation being employed, the depth and composition of overburden,
19 and the depth of the ferrous mineral deposit being mined.

20 (2) CERTIFICATE OF INSURANCE. The operator shall submit a certificate of
21 insurance certifying that the applicant has in force a liability insurance policy issued
22 by an insurer authorized to do business in this state or, in lieu of a certificate of
23 insurance, evidence that the applicant has satisfied state or federal self-insurance
24 requirements, covering all mining operations of the operator in this state and
25 affording personal injury and property damage protection in a total amount

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1 determined to be adequate by the department but not more than \$1,000,000 and not
2 less than \$50,000.

3 **(2m) PROOF OF FINANCIAL RESPONSIBILITY FOR LONG-TERM CARE OF MINING WASTE**
4 **SITE.** An operator shall maintain proof of financial responsibility ensuring the
5 availability of funds for compliance with the long-term care requirements specified
6 in the waste site feasibility study and plan of operation for a period of 40 years after
7 closing of the mining waste site. The operator shall furnish the proof of financial
8 responsibility to the department in one of the following forms:

9 (a) A bond

10 (b) Cash.

11 (c) Certificates of deposit.

12 (d) Government securities.

13 (e) Insurance.

14 **(3) WRITTEN AUTHORIZATION TO MINE.** Upon approval of the operator's bonds or
15 other security under subs. (1) and (2m), mining application, and certificate of
16 insurance, the department shall issue written authorization to begin mining at the
17 permitted mining site in accordance with the approved mining plan, reclamation
18 plan, and mining waste site feasibility study and plan of operation.

19 **(4) RECLAMATION BOND FOR MORE THAN ONE MINING SITE.** Any operator who
20 obtains mining permits from the department for 2 or more mining sites may elect,
21 at the time that the mining permit for the 2nd or any subsequent mining site is
22 approved, to post a single bond under sub. (1) in lieu of separate bonds for each
23 mining site. An operator who chooses to post a single bond under this subsection
24 shall post a bond in an amount equal to the estimated cost to the state determined
25 under sub. (1) of reclaiming all mining sites the operator has under mining permits.

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1 When an operator elects to post a single bond in lieu of separate bonds previously
2 posted on individual mining sites, the department may not release the separate
3 bonds until the department accepts the new bond.

4 (5) REVIEW OF AMOUNTS. If an operator disagrees with the amount of the bonds
5 or other security that the department requires under this section, the operator may
6 seek review under s. 295.77 of the amount required. The operator may post a bond
7 or other security in the amount required by the department and begin mining
8 without forfeiting its right to seek review.

9 **295.60 Impacts to wetlands. (1) DEFINITIONS.** In this section:

10 (a) "Area of special natural resource interest" has the meaning given in s.
11 281.37 (1) (a).

12 (b) "Artificial wetland" means a landscape feature where hydrophytic
13 vegetation may be present as a result of human modifications to the landscape or
14 hydrology and for which there is no prior wetland or stream history.

15 (c) "ASNRI wetland" means a wetland that is within the boundary of an area
16 of special natural resource interest or that is in close proximity to or that has a direct
17 hydrologic connection to an area of special natural resource interest.

18 (d) "Compensation" means the implementation of measures that will function
19 to improve functional values of wetlands or other water quality functions to offset
20 significant adverse impacts that remain after all practicable avoidance and
21 minimization measures have been achieved.

22 (e) "Federal compensatory mitigation requirement" means any mitigation
23 requirement that is imposed by the federal government.

24 (f) "Federal wetland" means a wetland that is ~~not a non-federal wetland and~~
25 ~~includes an ASNRI wetland.~~ subject to federal jurisdiction
under 33 USC 1344.

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1 (g) "Functional values and water quality" means the water quality related
2 wetland functional values and uses specified in sub. (6).

3 (h) "Impact" means a permanent, temporary, cumulative, secondary, direct or
4 indirect result that is attributable to a discharge to which the wetland water quality
5 standards apply. *means a wetland*

6 (i) "Mitigation" means the restoration, enhancement, or creation of wetlands
7 to offset significant adverse impacts to other wetlands.

8 (j) "Mitigation bank" means a system of accounting for wetland loss and
9 mitigation that includes one or more sites where wetlands are restored, enhanced,
10 or created to provide transferable credits to be subsequently applied to offset
11 significant adverse impacts to other wetlands.

12 (k) "Nonfederal wetland" *has the meaning given in s. 281.36 (1) (c) and includes*
13 *an ASNRI wetland. that is not subject to federal jurisdiction*
under 33 USC 1344.

14 (L) "On-site location" means a location that is within one-half mile of an outer
15 boundary of a mining site.

16 (m) "Practicable" means available and capable of being implemented after
17 taking into consideration cost, available technology, and logistics in light of the
18 overall project purposes and the needs for bulk sampling or a mining operation.

19 (n) "Riparian restoration project" means a project that will restore or enhance
20 the natural beneficial uses and value of a watercourse.

21 (o) "Water basin" means the Lake Michigan basin, the Lake Superior basin, or
22 the Mississippi River basin or other water basin established by the department.

23 (p) "Water management unit" means a subdivision of a water basin that is
24 established on a hydrological basis by the department.

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1 (q) “Watershed” means an area of land where all of the water drains into a
2 common waterway.

3 (r) “Wetland water quality standard” means a water quality standard specified
4 under sub. (6).

5 (2) SCOPE. This section applies to any water quality certification, or any other
6 approval that involves an evaluation of impact to wetlands, that is associated with
7 mining or bulk sampling.

8 (3) WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section,
9 wetland determinations and wetland boundary delineations shall be consistent with
10 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final
11 regional supplement to the manual. The department may rely on wetland
12 determinations and wetland boundary delineations made by other agencies and
13 consultants. If the applicant for a water quality certification or for any other
14 approval for an activity involving impacts to wetlands has provided information to
15 the department that is identified in the manual or any final regional supplement as
16 being sufficient to make a wetland determination or a delineation of boundaries, the
17 department may visit the site to conduct surveys or gather additional site-specific
18 quantitative data provided that the department does not discontinue the processing
19 of the application to do so.

20 (4) WATER QUALITY CERTIFICATION FOR FEDERAL WETLANDS. (a) For purposes of
21 issuing a water quality certification that is required pursuant to 33 USC 1341 (a) for
22 a discharge associated with a mining operation or bulk sampling into a federal
23 wetland or for issuing any other approval associated with a mining operation for an
24 activity that involves any impact to a federal wetland, the department shall review

1 the federal compensatory mitigation requirements proposed as part of the federal
2 permit application.

3 (b) For purposes of determining whether to issue a water quality certification
4 or other approval that requires an evaluation of impacts to federal wetlands, the
5 department shall determine whether it has reasonable assurance that the federal
6 permitting process and federal compensatory mitigation requirements will offset
7 any significant adverse impact to the functional values and water quality of the
8 federal wetland. For purposes of areas of special natural resource interest and
9 federal wetlands that are ASNRI wetlands, the department shall determine that
10 reasonable assurance exists if significant adverse impacts have been avoided or
11 minimized to the extent practicable and any remaining significant adverse impacts
12 are offset by compensation or mitigation. If the department determines that
13 reasonable assurance exists, the department may not impose any additional
14 conditions.

15 (c) If the department determines that reasonable assurance does not exist
16 under par. (b), it may impose conditions in the water quality certification or other
17 approval if such conditions are limited to those that are necessary to offset any
18 significant adverse impacts to the federal wetland that are not offset by the federal
19 compensatory mitigation requirements in the federal permit or other approval. Any
20 conditions imposed by the department shall permit a compensation and mitigation
21 program as provided in sub. (8).

22 (d) In imposing conditions under par. (c), the department may not increase the
23 number of acres to be mitigated under the federal compensatory mitigation
24 requirements that are applicable to the federal wetland.

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1 (e) The department shall issue a water quality certification under this
2 subsection if the federal permitting process, including any federal compensatory
3 mitigation requirement, offsets the significant adverse impacts to the functional
4 values and water quality of the federal wetland.

5 (5) WATER QUALITY CERTIFICATION FOR NONFEDERAL WETLANDS. (a) *Certification*
6 *required.* No person may discharge dredge or fill material associated with a mining
7 operation or bulk sampling into a nonfederal wetland unless the discharge is
8 authorized under a water quality certification issued under this section.

9 (b) *Avoidance or minimization of impacts.* For purposes of issuing a water
10 quality certification for a discharge subject to par. (a) or evaluating impacts to
11 nonfederal wetlands for any approval requiring an evaluation of impacts to
12 nonfederal wetlands, the department shall first determine whether any impact to
13 the nonfederal wetland caused by the mining operation or bulk sampling can be
14 avoided or minimized to the extent practicable. If the impacts have been avoided or
15 minimized to the extent practicable, any remaining impacts to nonfederal wetlands
16 or to areas of special natural resource interest may not be a basis for a denial of a
17 water quality certification provided that any remaining significant adverse impacts
18 are offset under a compensation and mitigation program under sub. (8).

19 (c) *Siting analysis.* 1. An applicant for a water quality certification for a
20 nonfederal wetland shall submit a siting analysis to the department for review. In
21 reviewing the siting analysis, the department shall recognize all of the following:

22 a. The limitations associated with the proposed location of the ferrous mineral
23 deposits to be mined or associated with bulk sampling.

24 b. The need for the mining waste sites and any processing facilities to be
25 contiguous to the location of the ferrous mineral deposits to be mined.

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1 c. The presumption that nonfederal wetlands will be impacted.

2 2. The siting analysis shall be limited to an analysis of alternative
3 configurations associated with the areas of the proposed ferrous mineral deposits to
4 be mined at the mining site and with the areas that are contiguous to those deposits.

5 3. If it is impracticable to avoid an impact to, or the use of, a nonfederal wetland,
6 the applicant shall identify in the siting analysis, and the department shall review,
7 those configurations that would result in impacts to the fewest acres of nonfederal
8 wetlands to the extent practicable. The department shall determine which
9 configuration will minimize the impacts to the fewest acres.

10 4. After the department makes the determination under subd. 3., the
11 department shall evaluate the impact of the mining operation to the functional
12 values and water quality of the nonfederal wetland.

13 **(5m) EVALUATION OF IMPACTS.** The department shall determine the impact of a
14 proposed activity upon the functional values and water quality of a wetland by using
15 wetland ecological evaluation methods jointly accepted by the U.S. Army Corps of
16 Engineers and the department and appropriate to the affected wetland.

17 **(6) WETLAND WATER QUALITY STANDARDS.** The following wetland water quality
18 standards shall apply to any water quality certification under sub. (4) or (5):

19 (a) Adverse impacts to the functional values and water quality of wetlands and
20 adverse impacts to other waters of the state that are influenced by wetlands shall be
21 minimized, and any significant adverse impacts remaining after minimization shall
22 be subject to a compensation and mitigation program under sub. (8). For purposes
23 of this section, functional values and uses consist of all of the following:

24 1. Storm and flood water storage and retention and the moderation of water
25 level fluctuation extremes.

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1 2. Hydrologic functions including the maintenance of dry season streamflow,
2 the discharge of groundwater to a wetland, the recharge of groundwater from a
3 wetland to another area, and the flow of groundwater through a wetland.

4 3. Filtration or storage of sediments, nutrients, or toxic substances that would
5 otherwise adversely impact the quality of waters of the state.

6 4. Shoreline protection against erosion through the dissipation of wave energy
7 and water velocity and anchoring of sediments.

8 5. Habitat for aquatic organisms in the food web including fish, crustaceans,
9 mollusks, insects, annelids, and planktonic organisms and the plants and animals
10 upon which these aquatic organisms feed and depend upon for their needs in all life
11 stages.

12 6. Habitat for resident and transient wildlife species, including mammals,
13 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel
14 corridors, and food.

15 7. Recreational, cultural, educational, scientific, and natural scenic beauty
16 values and uses.

17 (b) All of the following shall be minimized in order to avoid significant adverse
18 impacts for the purpose of maintaining or enhancing the functional values and water
19 quality identified under par. (a), and any minimization of the following must be taken
20 into account in the department's evaluation of significant adverse impacts:

21 1. The use of liquids, fill, or other solids or gases.

22 2. The presence of floating or submerged debris, oil, or other material.

23 3. The use of materials producing color, odor, taste, or unsightliness.

24 4. The presence of concentrations or combinations of substances that are toxic
25 or harmful to human, animal, or plant life.

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1 5. Adverse effects on hydrological conditions necessary to support the biological
2 and physical characteristics that are naturally present in wetlands. For purposes
3 of this subdivision, the hydrological conditions include of all of the following:

- 4 a. Water currents and erosion and sedimentation patterns.
- 5 b. Water temperature variations.
- 6 c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
- 7 d. The movement of aquatic fauna.
- 8 e. The pH of the wetland.
- 9 f. Water levels or elevations.

10 6. Adverse effects on existing habitat and populations of animals and
11 vegetation found in wetlands.

12 **(6m) SCOPE OF EVALUATION.** For purposes of issuing a water quality certification
13 under sub. (4) or (5), the department shall evaluate whether an activity will result
14 in a significant adverse impact to the functional values and water quality associated
15 with a wetland by doing all of the following:

16 (a) Comparing the functional values and water quality of the wetland with
17 other wetlands located within the boundaries of the mining site or within the same
18 water management unit as the mining site and with other waters of the state that
19 are located in the same water management unit.

20 (b) Taking into consideration the floristic province in which the mining site is
21 located.

22 **(7) APPROVAL BY DEPARTMENT; NONFEDERAL WETLANDS.** The department shall
23 issue a water quality certification under this section for a nonfederal wetland, if the
24 department determines all of the following:

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1 (a) All practicable measures will be taken to minimize the adverse impacts to
2 wetlands.

3 (b) Any significant adverse impacts to functional values and water quality that
4 remain are offset through a compensation or mitigation program under sub. (8).

5 (8) COMPENSATION AND MITIGATION PROGRAM. (a) *Contents.* A compensation and
6 mitigation program to offset significant adverse impacts to functional values and
7 water quality of wetlands shall contain all of the following:

8 1. Proposed projects for compensation or mitigation and a schedule for
9 implementing the projects. The projects may include riparian restoration projects.
10 These projects may be performed by a person other than the applicant, subject to the
11 department's approval of the projects and schedule.

12 2. If the program is applicable to a federal wetland, all federal compensatory
13 mitigation requirements associated with the federal wetland application.

14 (b) *Option of applicant:* An applicant submitting a program under par. (a) may
15 submit ^{options} ~~proposals~~ for compensation or mitigation ^{or} any combination thereof. In
16 preparing the program, the applicant shall identify and consider compensation and
17 mitigation that could be conducted within the same watershed in which the mining
18 site is located.

19 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed
20 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of
21 credits in a mitigation bank, each acre that is subject to mitigation shall count as at
22 least one credit.

23 (d) *Sequence.* If it is not practicable or ecologically preferable to conduct
24 compensation or mitigation at an on-site location or if there is no on-site location
25 that will provide sufficient wetland acreage, the department shall allow the

These options may include
par. (d)
of mitigation
of the types specified in par. (d)

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subject to par. (e)

1 applicant to conduct compensation or mitigation at a site other than an on-site
2 location. Compensation or mitigation shall be accomplished through the following
3 types options:

4 1. Implementation of a project for compensation or mitigation. Projects for
5 compensation at a site other than an on-site location may include projects to protect
6 upland groundwater recharge areas, shoreline stabilization projects, and riparian
7 restoration projects.

8 2. Purchase of mitigation credits from a mitigation bank for a site in a mitigation bank that
9 is located anywhere in the state subject to par. (e)

10 3. Purchase of mitigation credits from a mitigation bank established prior to
11 February 1, 2002, if the department determines that the bank sponsor is in
12 compliance with any applicable memorandum of understanding between the bank
13 sponsor and the department.

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14 (9) MINING PERMIT. Any water quality certification issued by the department,
15 including all of the conditions imposed as part of the certification, shall be included
16 in the mining permit.

17 (10) CONSERVATION EASEMENTS. (a) A person who is the holder of a water quality
18 certification that authorizes mitigation to be implemented by the holder of the
19 certification at an on-site location shall grant a conservation easement under s.
20 700.40 to the department to ensure that the wetland that is subject to the mitigation
21 will not be destroyed or substantially degraded by any subsequent proprietor of or
22 holder of interest in the property on which the wetland is located. The department
23 shall suspend the mining permit if the holder of the permit fails to grant the
24 easement within the time limit set forth in the mining permit. If the holder

4. Participation in the in lieu fee subprogram, if such a subprogram is established under S. 281.36 (3r) (e).

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1 subsequently grants the conservation easement to the department, the department
2 shall reinstate the mining permit.

3 (b) Notwithstanding par. (a), the department shall modify or release a
4 conservation easement granted under par. (a) if all of the following apply:

5 1. The department determines that part or all of the wetland subject to the
6 mitigation ceases to be a wetland.

7 2. The person who is required to grant the conservation easement did not
8 contribute to the loss of the wetland as specified in subd. 1.

9 3. Any subsequent proprietor of or holder of interest in the property on which
10 the wetland specified in subd. 1. is located did not contribute to the loss of the
11 wetland.

12 (11) EXEMPTIONS. (a) *Artificial wetlands*. All of the following artificial wetlands
13 that are associated with a mining operation are exempt from the water quality
14 certification provisions and ~~compensation and~~ mitigation provisions under this
15 section and under any other statute or rule relating to impacts on wetlands:

16 1. An artificial wetland that is a sedimentation or stormwater detention basin
17 or associated conveyance feature operated and maintained only for sediment
18 detention and flood storage purposes.

19 2. An artificial wetland that is an active sewage lagoon, cooling pond, waste
20 disposal pit, fish rearing pond, or landscape pond.

21 3. An artificial wetland that is actively maintained farm drainage and roadside
22 ditches.

23 4. An artificial wetland as part of an active mining operation.

24 (c) *Other exempted activities*. For nonfederal wetlands, all of the following
25 activities that are associated with a mining operation or bulk sampling are exempt

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1 from the water quality provisions and compensation and mitigation provisions under
2 this section and any other law relating to impact on wetlands if the applicant
3 minimizes any adverse effect on the environment as a result of the activities:

4 1. Maintenance, emergency repair, or reconstruction of damaged parts of
5 structures that are in use in a wetland.

6 2. Construction or maintenance of irrigation or drainage ditches.

7 3. Construction or maintenance of farm roads, forest roads, or temporary
8 mining roads that is performed in accordance with best management practices, as
9 determined by the department.

10 (12) RELATIONSHIP TO OTHER LAWS. None of the following apply to a mining
11 operation or bulk sampling:

12 (a) Sections 281.36 and 281.37, except as otherwise specifically provided in this
13 section.

14 (b) Any rule promulgated by the department relating to wetlands that conflicts
15 with this section, except that no rule promulgated by the department under s. 281.36
16 or 281.37 applies to a mining operation or bulk sampling.

17 **295.605 Impacts to navigable waters.** (1) DEFINITION. In this section,
18 "navigable water activity" means an activity for which a permit or contract is
19 required under s. 30.12, 30.123, 30.19, 30.195, or 30.20.

20 (2) PERMIT OR CONTRACT REQUIRED. No person may engage in any navigable
21 water activity associated with bulk sampling or mining unless the person has been
22 issued a permit or entered into a contract as provided under sub. (4).

23 (3) APPLICATION; RIPARIAN STATUS. (a) Any person who intends to engage in a
24 navigable water activity associated with bulk sampling or mining need not be a
25 riparian owner to do any of the following:

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1 1. Apply for and be issued an individual permit for a navigable water activity
2 under s. 30.12, 30.123, 30.19, or 30.195.

3 1m. Enter into a contract under s. 30.20.

4 2. Engage in an activity that is exempt under s. 30.12, 30.123, 30.19, 30.195,
5 or 30.20.

6 3. Seek authorization under a general permit issued under s. 30.12, 30.123,
7 30.19, or 30.20.

8 (b) If a person is applying for more than one permit or contract for a navigable
9 water activity associated with bulk sampling or mining, the person may file a single
10 application. The application shall include any information requested by the
11 department under s. 295.45 (3).

12 (4) REQUIREMENTS. (a) *Generally*. The department shall issue a permit, or enter
13 into a contract, for a navigable water activity if the navigable water activity meets
14 all of the following requirements:

15 1. The navigable water activity will not significantly impair public rights and
16 interests in a navigable water.

17 2. The navigable water activity will not significantly reduce the effective flood
18 flow capacity of a stream.

19 3. The navigable water activity will not significantly affect the rights of
20 riparian owners or the applicant obtains the consent of the riparian owners.

21 4. The navigable water activity will not significantly degrade water quality.

22 (b) *Measures*. The person applying for the permit or contract shall submit a
23 plan to the department containing proposed measures to meet the requirements
24 under par. (a) and a proposed schedule for implementing the measures. The plan
25 shall include one or more of the following measures:

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1 1. Measures to offset significant impacts to navigable waters by providing
2 public access to, restoring, or enlarging up to 1.5 acres of navigable waters in
3 exchange for each acre of navigable waters that is significantly impacted.

4 2. Measures to improve public rights or interests in navigable waters.

5 3. Measures to offset significant impacts to water quality or quantity.

6 4. Measures to enhance flood storage.

7 5. Compensation of mitigation as provided under s. 295.60.

8 6. Conservation measures as provided in s. 295.61.

9 (bn) *Plan review; finding.* In reviewing the plan, the department may require
10 that measures that are in addition to, or in conjunction with, one or more of the
11 measures specified in par. (b) 1. to 6. be included in the plan. After reviewing the plan
12 and application, if the department finds that the requirements under par. (a) will be
13 met by implementing some or all of the measures contained in the plan, the
14 department shall determine which measures shall be required, shall approve a
15 schedule for implementation, and shall issue the permit or enter into the contract.

16 (c) *Applicability of requirements.* The requirements that are specified in par.
17 (a) 1. to 4. are in lieu of any requirements required for permits under ss. 30.12 (3m)
18 (c), 30.123 (8) (c), 30.19 (4) (c), and 30.195 (2) (c) and are in lieu of any requirements
19 for contracts under s. 30.20 that relate to the state's or public's interests and shall
20 be used, in conjunction with the measures required under par. (b), in any evaluation
21 by the department pursuant to 33 USC 1341.

22 **(5) PERMIT CONDITIONS.** The department may impose conditions in a permit for
23 a navigable water activity that it determines to be necessary to ensure that the
24 navigable water activities subject to the permit meet the requirements under par. (a).

1 (6) RELATIONSHIP TO OTHER LAWS. (a) Chapter 30 and any rules promulgated
2 under that chapter apply to any navigable water activity subject to this section to the
3 extent that they do not conflict with this section, except as provided in par. (b).

4 (b) Sections 30.208, 30.209, and 30.2095 and any rules promulgated under
5 those sections, do not apply to any navigable water activity that is subject to this
6 section.

7 **295.607 Shoreland and floodplain zoning.** (1) (b) (a) In this section:

8 1. "Development or construction activity" means a waste site, structure,
9 building, fill, or other development or construction activity.

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10 ~~2~~ "Shoreland ~~or floodplain~~ zoning ordinance" means a shoreland ~~or floodplain~~
11 zoning ordinance or regulation adopted under s. 59.692, 61.351, 62.231, ~~(87.80)~~ or
12 281.31. (b) (2) (a)

13 ~~(b)~~ The department may not prohibit a development or construction activity to
14 be located in an area that would otherwise be prohibited under a shoreland ~~or~~
15 ~~floodplain zoning ordinance~~ if the development or construction activity is authorized
16 by the department as part of a mining operation covered by a mining permit under
17 s. 295.58. (b)

18 ~~(b)~~ A development or construction activity located in an area that would
19 otherwise be prohibited under a shoreland ~~or floodplain~~ zoning ordinance does not
20 violate the applicable ordinance if the development or construction activity is
21 authorized by the department as part of a mining operation covered by a mining
22 permit under s. 295.58. No shoreland ~~or floodplain~~ zoning variance is required for
23 a development or construction activity located as provided under this paragraph.

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24 **295.61 Withdrawals of surface waters and groundwater. (1)**

25 DEFINITIONS. In this section:

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- 1 (a) "Authorized base level of water loss" has the meaning given in s. 281.35 (1)
- 2 (b).
- 3 (b) "Environmentally sound and economically feasible water conservation
- 4 measures" has the meaning given in s. 281.346 (1) (i).
- 5 (c) "Great Lakes basin" has the meaning given in s. 281.35 (1) (d).
- 6 (d) "High capacity well" has the meaning given in s. 281.34 (1) (b).
- 7 (e) "Interbasin diversion" has the meaning given in s. 281.35 (1) (g).
- 8 (f) "Upper Mississippi River basin" has the meaning given in s. 281.35 (1) (j).
- 9 (g) Unless the context otherwise requires, "use" includes dewatering.
- 10 (h) "Water loss" has the meaning given in s. 281.35 (1) (L).
- 11 (i) "Withdrawal" has the meaning given in s. 281.35 (1) (m).

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12 (2) PERMIT REQUIRED. No person may engage in any withdrawal or use of surface
 13 water as part of a mining operation or bulk sampling unless the person has been
 14 issued a water withdrawal permit under this section. No person may engage in any
 15 withdrawal or use of groundwater as part of a mining operation or bulk sampling if
 16 the capacity and rate of withdrawal of all wells involved in the withdrawal of
 17 groundwater or the dewatering of mines exceeds 100,000 gallons each day unless the
 18 person has been issued a water withdrawal permit under this section.

19 (3) PERMIT APPLICATION. (a) *Application.* Any person applying for a water
 20 withdrawal permit is required to submit only one application. A person applying for
 21 such a permit need not be a riparian owner. An application for a water withdrawal
 22 permit shall include any information requested by the department under s. 295.45
 23 (3).

24 (b) *Siting analysis.* If withdrawal of water at a mining operation or for bulk
 25 sampling will involve one or more high capacity wells, the department shall require

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1 an applicant for a water withdrawal permit to submit a siting analysis for the
2 purpose of determining the location of the high capacity wells. The analysis shall
3 include alternate proposed locations for each high capacity well. In evaluating a
4 submitted analysis, the department shall recognize there is a need for mining waste
5 sites, processing facilities, including wastewater and sludge storage or treatment
6 lagoons, to be contiguous to the location of the ferrous mineral deposit, and shall
7 allow any high capacity well to be located so that need will be met. The department
8 shall approve the location of each high capacity well as part of the permit issued
9 under sub. (4).

10 (c) *Entry to land.* After an application for a water withdrawal permit has been
11 submitted under this section, the applicant may enter any land from which the
12 applicant proposes to withdraw water or use water for the purpose of making any
13 surveys required for the mining operation or bulk sampling, but no work may be
14 commenced necessary for the mining operation or the bulk sampling until the
15 department issues the permit under this section.

16 (4) PERMIT ISSUANCE. (a) *General requirements.* The department shall issue
17 a water withdrawal permit if, ~~after considering the factors under par. (d),~~ it
18 determines that the withdrawal or use of the surface water or groundwater meets
19 all of the following requirements:

20 1. The proposed withdrawal and uses of the water are substantially consistent
21 with the protection of public health, safety, and welfare and will not be significantly
22 detrimental to the public interest.

23 2. The proposed withdrawal and uses of the water will not have a significant
24 adverse impact on the environment and ecosystem of the Great Lakes basin or the
25 Upper Mississippi River basin.

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1 3. The proposed withdrawal and use of the water will not be significantly
2 detrimental to the quantity and quality of the waters of the state.

3 4. The proposed withdrawal and use of the water will not significantly impair
4 the rights of riparian owners or the applicant obtains the consent of the riparian
5 owners.

6 5. The proposed withdrawal and use of the water will not result in significant
7 injury to public rights in navigable waters.

8 6. If the withdrawal or the use of the water will result in an interbasin
9 diversion, the requirements of s. 281.35 (5) (d) 7. are met.

10 7. The proposed withdrawal or use of the water will comply with any
11 requirements imposed by the department under par. (cm).

12 (b) *Conservation measures.* The person applying for the permit shall submit
13 a plan to the department containing proposed conservation measures to meet the
14 requirements under par. (a) and a proposed schedule for implementing the
15 measures. The plan shall include one or more of the following measures:

16 1. Environmentally sound and economically feasible water conservation
17 measures.

18 2. Restoration of hydrologic conditions and functions of the source watershed,
19 or if the withdrawal is from a stream tributary to one of the Great Lakes, restoration
20 of the hydrologic conditions and functions of that stream.

21 3. Protection of important upland groundwater recharge areas.

22 4. Stabilization of shorelands.

23 5. Restoration or enhancement of the natural beneficial uses and values of a
24 stream or river.

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1 6. Implementation of any feasible methods to offset impacts to water quality
2 or quantity.

3 7. Supplementation of additional water to water bodies to offset lower water
4 levels.

5 8. Taking steps to improve public rights or interests in navigable waters, if
6 navigable waters are subject to the permit.

7 9. Mitigation or compensation as provided in s. 295.60.

8 10. Measures to offset significant impacts to navigable waters by providing
9 public access to, restoring, or enlarging up to 1.5 acres of navigable waters in
10 exchange for each acre of natural navigable waters that is significantly impacted.

11 11. A riparian restoration project as defined in s. 295.60 (1) (n).

12 12. Measures as provided in s. 295.605.

13 (bn) *Plan review; finding.* In reviewing the plan, the department may require
14 that conservation measures that are in addition to, or in conjunction with, one or
15 more of the conservation measures specified in par. (b) 1. to 12. be included in the
16 plan. After reviewing the plan and application, if the department finds that the
17 requirements under par. (a) will be met by implementing some or all of the
18 conservation measures contained in the plan, the department shall determine which
19 measures shall be required, shall approve a schedule for implementation, and shall
20 issue the permit.

21 (cm) *Impacts to water supplies.* If the department determines that a proposed
22 withdrawal or use of water will result in a significant impact to a public or private
23 water supply, the department shall require the applicant to offset that impact in a
24 manner approved by the department, which may include a requirement that the

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1 applicant provide a replacement water supply of similar quality or provide an
2 increased amount of water to the water supply.

3 (d) *Public benefits.* As part of its determination under par. (a), the department
4 shall consider whether the public benefits resulting from the mining operation or
5 bulk sampling exceed any injury to public rights and interests in a body of water that
6 is affected by the mining operation or bulk sampling. The department shall
7 recognize that the withdrawal and use of the waters of the state in connection with
8 mining is in the public's interest and welfare and fulfills a public purpose and shall
9 consider all of the following factors:

10 1. Public benefits that may be provided by increased employment, economic
11 activity, and tax revenues from the mining operation.

12 2. The direct and indirect social benefits and costs that will result from the
13 proposed mining operation.

14 3. The rights of riparian owners or other competing users to the water that will
15 be subject to the permit.

16 4. The extent to which any impacts from mining or bulk sampling will be
17 temporary.

18 (e) *Use of nonriparian waters.* Water withdrawn in accordance with a water
19 withdrawal permit may be used on nonriparian property.

20 (f) *Limits on permit denials.* If the department determines that one of the water
21 withdrawal activities subject to an application for a water withdrawal permit does
22 not meet the requirements for issuing the permit under par. (a) and will not be
23 authorized under the permit, the failure to authorize the activity may not affect the
24 department's determination as to whether to approve or deny the permit for other
25 water withdrawal activities that are subject to the application.